

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SARA SMITH,

Plaintiff,

v.

SHOP RITE, *et al.*,

Defendants.

NO. 3:17-CV-0907

(JUDGE CAPUTO)

(MAGISTRATE JUDGE ARBUCKLE)

ORDER

NOW, this 29th day of May, 2018, upon review of the Report and Recommendation of Magistrate Judge William I. Arbuckle (Doc. 12) for plain error or manifest injustice, **IT IS HEREBY ORDERED** that:

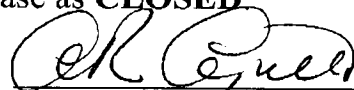
- (1) The Report and Recommendation (Doc. 12) is **ADOPTED** as stated herein.
- (2) The Second Amended Complaint (Doc. 10) is **DISMISSED** without prejudice pursuant for lack of subject matter jurisdiction. *See New Jersey Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 241 n.8 (3d Cir. 2011) ("District Court's dismissal for lack of subject matter jurisdiction [is] by definition without prejudice."); *Figueroa v. Buccaneer Hotel Inc.*, 188 F.3d 172, 182 (3d Cir. 1999) ("a dismissal for lack of subject matter jurisdiction is not an adjudication on the merits and thus should be ordered without prejudice.").
- (3) The Clerk of Court is directed to mark the case as **CLOSED**.

**FILED
SCRANTON**

MAY 29 2018

PER

DEPUTY CLERK



A. Richard Caputo
United States District Judge